

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA Nos.2856 & 2857/PUN/2017**
निर्धारण वर्ष / **Assessment Years : 2009-10 & 2013-14**

Urmila Ulhas Ghosalkar,
H.No.1777, Br. Nath Pai Road,
Maruti Lane, Ratnagiri-415612.

PAN : AAVPG6577F

.... अपीलार्थी/Appellant

Vs.

ACIT, Ratnagiri Circle,
Ratnagiri.

.... प्रत्यर्थी / Respondent

Assessee by : Shri Sanjay Vhanbatte
Revenue by : Shri Sanjeev Ghai

सुनवाई की तारीख / Date of Hearing : 10.04.2019	घोषणा की तारीख / Date of Pronouncement: 07.06.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are two appeals under consideration for the assessment years 2009-10 and 2013-14. Both the appeals are filed by the assessee against the common order of CIT(A)-2, Kolhapur dated 01.11.2017.

ITA No.2856/PUN/2017 (A.Y. 2009-10)

2. The grounds raised by the assessee for the assessment year 2009-10 are as under :-

"1. The Commissioner of Income Tax (Appeals)-2, Kolhapur (Hereinafter referred to as the CIT(A)) erred in confirming the addition made by the ITO of Rs.1,00,000/- being the amount credited in the bank account of the appellant as unexplained credits.

The appellant submits that, the credit entry in the bank account being through banking channel (which is mostly in the nature dividend from mutual funds or proceeds of mutual fund sales, maturities of Life Insurance Policies) no addition is warranted in this respect.

The appellant therefore prays that the ITO be directed to delete the addition.

The appellant craves leave to add to, amend, alter, delete or modify all or any of the above ground of appeal or raise a new ground of appeal before or at the time of hearing.”

3. Referring to the above grounds, ld. Counsel for the assessee submitted, at the outset, that the figure of Rs.1,00,000/- mentioned in the grounds should represent Rs.3,00,000/- and the same constitutes a typographical mistake.

4. Referring to the facts of this addition, ld. Counsel submitted that the Assessing Officer made the said addition as per discussion given in para 9 of the assessment order. Reading the relevant line from the said para 9, ld. Counsel submitted that the assessee has a suspense account showing a sum of Rs.3,00,000/-. When there is an enquiry into the said account by the Assessing Officer, the assessee could not provide explanation. Therefore, the Assessing Officer made addition of Rs.3,00,000/- on account of unexplained credits.

5. During the first appellate proceedings, the assessee submitted that the similar account exists commonly for the assessment years 2009-10, 2011-12 and 2013-14. The assessee submitted before the CIT(A) that the source for the said Rs.3,00,000/- is the amount earned by way of redemption of mutual funds. However, the assessee could not demonstrate the sale transactions of mutual funds, the flow of funds, the bank account

details, the details of the mutual funds, etc. Therefore, the CIT(A) confirmed the same as per the discussion given in para 5.2 of his order.

6. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before the Tribunal with above extracted grounds.

7. Before us, ld. Counsel for the assessee submitted that the preparation of cash flow chart of funds earned by way of redemption nature mutual funds to the credit of Rs.3,00,000/- in suspense account, is not possible due to the non-availability of the relevant details. He, however, left the issue to the Bench for decision based on the available facts.

8. On the other hand, ld. DR for the Revenue relied heavily on the orders of the Assessing Officer and the CIT(A). Further, ld. DR submitted that the assessee is under obligation to discharge the onus in matters relating to the suspense account.

9. On hearing both the sides, we find relevant to extract para 5.2 of the order of the CIT(A) and the same is extracted hereunder :-

“5.2 Ground 2 for AYs 2009-10, 2011-12 & 2013-14: This is against the addition made being the balance in the suspense account in the balance sheet. Before me, the appellant has attempted to explain the nature of these entries too but as could be seen from the submissions made, the explanation carries no weight for the AYs 2009-10 & 2013-14. The appellant has stated that the credit entries of Rs 3,00,000 and Rs 4,60,141 respectively for these 2 AYs are most likely credit entries from redemption of mutual funds. However the appellant has led no evidence in this regard. I therefore have no hesitation in upholding the action of the AO in assessing the same as income. Ground 2 for the AYs 2009-10 & 2013-14 is dismissed.”

10. From the above, it is evident that the assessee failed to discharge the onus before the CIT(A). Assessee did not improve the case even before us.

Considering the above failure of the assessee in discharging the onus, we are of the opinion the order of the CIT(A) has to be confirmed without any amendment. Accordingly, the grounds raised by the assessee are dismissed.

11. In the result, the appeal of the assessee in ITA No.2856/PUN/2017 for the assessment year 2009-10 is **dismissed**.

ITA No.2857/PUN/2017 (A.Y. 2013-14)

12. The grounds raised by the assessee for the assessment year 2013-14 are as under :-

“1. The Commissioner of Income Tax (Appeals)-2, Kolhapur (Hereinafter referred to as the CIT(A)) erred in sustaining the addition made by the Income Tax Officer, Ward-2, Ratnagiri (hereinafter referred to as the ‘ITO’) on account of suppression of expenses incurred for earning agricultural income.

The appellant submits as under, without prejudice to each other:

- a. The appellant having maintained all details of agricultural expenses, the CIT(A) ought not to have confirmed the addition made by the ITO solely relying on certificate of Dr. Balasaheb Sawant Kokan Krishi Vidyapeeth, Dapoli, inasmuch as the certificate represents only estimates of expenses likely to be incurred.*
- b. The agricultural income being the same as that shown in original return, which is subjected to scrutiny u/s 143(3) in many years and having been accepted by the then A.O. in such scrutiny assessments no addition is warranted in this respect.*
- c. The expenses as shown by the appellant being reasonable and justified particularly in view of the nature of crops grown (Mangoes, Cashews etc.) the CIT(A) ought to have accepted the expenses as shown by the appellant in the books of account.*
- d. The alleged suppression of expenses would have effect only of reducing the agricultural income. Addition in this respect to taxable income is uncalled for.*

The appellant prays that the ITO be directed to delete the addition

2. *The CIT(A) erred in confirming the addition made by the ITO of Rs.1,00,000/- being the amount credited in the bank account of the appellant as unexplained credits.*

The appellant submits that, the credit entry in the bank account being through banking channel (which is mostly in the nature dividend from mutual funds or proceeds of mutual fund sales, maturities of Life Insurance Policies) no addition is warranted in this respect.

The appellant therefore prays that the ITO be directed to delete the addition.

The appellant craves leave to add to, amend, alter, delete or modify all or any of the above ground of appeal or raise a new ground of appeal before or at the time of hearing.”

13. Referring to ground no.1, ld. Counsel submitted that the issue raised in the ground relates to the allowability of the extent of agricultural expenditure. The relevant facts of the issue include that the assessee is mainly engaged in the business of newspaper printing and the assessee also reported earning of agricultural income from agricultural lands since many years. The assessee grows various crops like Mangoes, Cashews and Coconuts. However, the assessee did not claim major expenditure explaining that these fruits bearing trees do not require an expenditure on account of pesticides, fertilizers, labour expenses etc.

14. During the assessment proceedings, the assessee furnished the report from Dr. Balasaheb Sawant Kokan Krishi Vidyapeeth, Dapoli and argued that the said report supports the contention of the assessee on this account of agricultural expenses. Without prejudice to the above, the assessee also made an alternate submission that revolves around the need for going for estimated agricultural expenditure. For the year under consideration, the Assessing Officer quantified a sum of Rs.1,56,937/- towards agricultural expenditure for the year. The Assessing Officer

accepted the same and the same was added as income of the assessee as per the discussion given in para 8.1 of the assessment order. The CIT(A) confirmed the same. Aggrieved with the same, the assessee is in appeal before the Tribunal with ground no.1 extracted above.

15. Before us, ld. Counsel for the assessee reiterated the arguments raised before the Assessing Officer and the CIT(A). However, to bring litigation to the end, ld. AR left the issue to the Bench to decide on the merits.

16. The ld. DR for the Revenue, on the other hand, relied heavily on the orders of the Assessing Officer and CIT(A).

17. On hearing both the sides, we find the addition made by the Assessing Officer amounting to Rs.1,56,937/- is supplied by the assessee himself without prejudice to the other arguments. The same is now based on the data provided by Dr. Balasaheb Sawant Kokan Krishi Vidyapeeth, Dapoli. We, however, perused the order of the CIT(A) on this issue and find para 5.1 is relevant to extract and the same is extracted hereunder :-

“5.1 Ground 1 for all AYs: The 1st ground is against the addition towards suppressed agricultural expenses. The appellant submitted before me that the agricultural income in his case upto AY 2006-07 was accepted by the AO for the same crops grown on the same land. He also submitted that the AO in the AY 2007-08 had disallowed 20% of agricultural expense on an ad hoc basis which was then subsequently deleted by the CIT(A) and the ITAT. I have perused the orders of the CIT(A) and ITAT for the AY 2007-08, and I find that the appellate authorities have deleted this ad hoc addition on the grounds that the AO had no evidence with him to disallow a part of the agriculture expenses. In the present AYs in appeal, the facts are different as the AO has collected the data from an expert institution in the field of agriculture. This evidence cannot be denied as it is coming from an expert in the field. This is also independent evidence. I also find that the divergence is not negligible so as to be ignored as being merely an estimate. The appellant has argued before me that the opinion given by the Institute is merely an estimate. Though this is true, the same cannot be ignored while examining

*the expenses debited in the books of the appellant. The appellant does not have anything particular to say to rebut the opinion given by the Institute. I am therefore inclined to agree with the AO in principle of the issue that the appellant has suppressed his agricultural expenses. The issue therefore which emerges is that the appellant has suppressed his agricultural expenses and therefore the question is what is the source of cash in his hands to incur such expenses. In this regard, the alternate submission made by the appellant deserves serious consideration. The appellant has submitted before me that "Even if the estimated expenses are assumed to be correct, sufficient cash balances are available per my books as produced before the A.O. during the course of assessment proceedings. A chart is enclosed showing the comparison of cumulative agricultural expenses added verses the cash available in the respective year of addition. This shows that except for a few years sufficient cash balance is available to meet even such additional expenses as estimated by the ITO. It is submitted that addition is not warranted at least in the years in which the available cash balance is sufficient to meet such additional expenses determined by the ITO". I find merit in this claim of the appellant. He has surplus cash in his books which could be telescoped to the suppressed expenses incurred in cash. **I am inclined to accept this alternate argument of the appellant.** From the details submitted before me, it is evident that the appellant had sufficient cash balance in his books to meet the suppressed agricultural expenses in the AY 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13. However the appellant does not have sufficient cash balance as compared to the cumulative agricultural expenses incurred for the 6 AYs in the AY 2013-14. **The shortfall is Rs5,61,903 for the AY 2013-14.** The addition made by the AO on this issue for the AY 2008-09, 2009-10, 2010-11, 2011-12, & 2012-13 are deleted and ground 1 for these years is allowed. The addition made by the AO on this issue for the AY 2013-14 is sustained and ground 1 for AY 2013-14 is dismissed."*

18. The CIT(A) discussed the issue of adequacy of cash balance specific to the assessment year 2013-14 under consideration. Eventually, CIT(A) arrived at the shortfall of cash for this year. CIT(A) fairly allowed the ground on similar issue for earlier assessment years. Therefore, we are of the opinion, that the order of CIT(A) is fair and reasonable on this issue and it does not call for any interference. Thus, alternative contention of the assessee stands confirmed and the ground no.1 is dismissed.

19. Referring to ground no.2. Id. Counsel for the assessee submitted that the sum of Rs.1,00,000/- constitutes typographical mistake and the same

needs to be replaced by the figure of Rs.4,60,141/-. This issue is identical and adjudicated by us in the preceding paragraphs of this order while deciding the appeal of the assessee in ITA No.2856/PUN/2017. Accordingly, the said ground no.2 is **dismissed** for the same reasons.

20. In the result, the appeals of the assessee in ITA Nos.2856 & 2857/PUN/2017 are dismissed.

Order pronounced on 07th day of June, 2019.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 07th June, 2019.
Sujeet

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Kolhapur;
4. The CCIT, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune